

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 313 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DIVISIONAL CONTROLLER GSRTC

Versus

GULAMAMAD UMAR RAJSUMRA

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Appearance:

MR KN RAVAL for Petitioner

MR KANUBHAI I PATEL for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/09/1999

ORAL JUDGEMENT

Mr. Raval, the learned advocate has appeared for the petitioner. in this petition, rule issued on 19th December, 1990 has been served on the defendant. At the time of issuing the rule, this court has passed the order that the name of the respondent shall be reinserted in the list of badli workers from 1st April, 1991 and shall be retained on the said list subject to the ultimate

decision of this court.

The facts of the present case are that the respondent workman was working as a driver in the Junagadh depot of the petitioner corporation. the respondent was working as badli workman in the petitioner corporation. The respondent was entrusted with the duty of extra trip bus from Junagadh depot to Jund fare. According to the respondent workman, booking of the tickets of the passengers was done at the stand in the said fare and he was given vouchers of the passengers to whom he carried by the ST bus. The case of the respondent was that it was not his duty to issue tickets to the passengers but to drive the bus. When his bus started from Veraval alongwith the said passengers, there was no conductor to conduct the journey and his bus was checked on the way and at that time, there were only 16 passengers in the bus as per the voucher with him. The memo dated 29th September, 1986 Exh. 8 was served to the respondent by the petitioner Corporation alleging that the respondent had carried the passengers without ticket in the bus driven by him at the time of journey in question. It was specifically alleged in the memo that the respondent alleged 11 passengers to have travelled in the bus without tickets and fare was collected from them. SO, it was the specific allegation of the petitioner corporation that the respondent workman had illegally recovered fare from 11 passengers and allowed them to travel in the said bus unauthorizedly. The checking party has recorded statements of three passengers to that effect against the respondent. The said allegation was denied by the respondent but without holding any departmental inquiry against the respondent, the service of the respondent has been terminated by the petitioner corporation under order dated 22nd April, 1987 whereunder his service was terminated and his name was removed from the wait list of the Badli Drivers. Therefore, the respondent had raised the industrial dispute challenging the said action of the corporation in demand notice dated 10th August, 1987 which was ultimately referred to for adjudication under section 10 of the Act to the Labour Court being Reference No. 1403 of 1987. Before the labour Court, the petitioner Corporation produced documents Exh. 8 to 13 vide list Exh. 7 and the same were admitted by the respondent workman. After considering the evidence brought on record, the labour court has come to the conclusion that under the circumstances, it was the duty of the petitioner corporation to serve copies of the statements of the said passengers who have given statement before the checking party and the respondent ought to have been given an

opportunity of cross examining the evidence of those witnesses. The papers of inquiry show that no such opportunity was given to the respondent workman and the respondent has denied to have recovered the fare from the said passengers and to have allowed them to sit in the bus. So, it was the duty of the petitioner to prove these facts against the respondent at the time of inquiry held against the respondent and to prove that fact at least before labour court but it appears from the papers of inquiry that no such opportunity was given by the corporation to the petitioner before passing the impugned order of removal of his name from the waiting list against the workman. These allegations against the applicant were not proved before Labour Court by leading any oral evidence. Therefore, according to the conclusion of the labour court, said order of termination and deleting the name of the respondent was quite illegal, arbitrary and against the principles of natural justice. Same was, therefore, set aside by the labour Court. The labour Court has considered the question of back wages and come to the conclusion that the workman cannot claim the same because he was badli worker to whom the work was to be given only when regular staff was on leave and off and the respondent applicant has not proved at all that he was given regular employment by the petitioner corporation. In the premises as aforesaid, the labour Court directed the petitioner Corporation to include the name of the respondent workman in the wait list of driver and give him work as and when necessity arise and the past service of the applicant was directed to be considered while including his name in the wait list.

Said award dated 20th August, 1988 passed by the labour court has been challenged by the petitioner in this petition under Article 227 of the Constitution of India. Here, it should be noted that at the time of admitting this petition by issuing rule, no interim relief was granted in favour of the petitioner corporation. The petition was admitted by this Court on 19.12.1990. While admitting this petition, it was directed by this Court that the name of the respondent workman shall be reinserted in the list of badli workers from April 1, 1991 and was directed to be retained on the list, of course, subject to the final disposal of the present petition. It was also directed that if the name of the respondent has already been reinserted, his name should not be deleted on account of said directions issued while admitting the petition.

It was contended by Mr.Raval,the learned advocate

appearing for the petitioner Corporation that the respondent was a Badli workman and has committed serious misconduct and allowed unauthorizedly the passengers to travel in the bus. He has also contended that the respondent being the Badli Workman, it was not incumbent upon the petitioner to initiate detailed inquiry as per the service rules of the Corporation. Therefore, there was no need to initiate detailed departmental inquiry by affording opportunity of hearing and producing evidence etc. to the respondent workman before passing the orders adverse to him.

I have considered the contentions raised by the learned advocate appearing for the petitioner corporation. Prima facie, this contention is not correct because if the corporation wants to pass any orders adverse on the basis of the allegations and misconduct alleged to have been committed by the respondent workman, then, it was incumbent for the corporation to afford him an opportunity of raising defence and controverting the allegations levelled against him in accordance with the principles of natural justice. The controversy involved in the present petition is squarely covered by the decision reported in 1993(1) GLR 442.

Therefore, in view of the above decision of this court, the action of the corporation in deleting the name of the respondent from the wait list of Badli worker is contrary to the principles of natural justice. In my view, the labour Court has passed the award impugned in this petition after appreciating the evidence produced before it and no infirmity or irregularity has been pointed out by the learned advocate for the corporation warranting any interference by this court in exercise of the extraordinary plenary powers under Article 227 of the Constitution of India. Therefore, the petition is required to be rejected. Here, it should be noted that in view of the directions issued by this Court at the time of issuing rule, name of the respondent has been reinserted in the list of Badli Driver and now, by passage of time, it is possible that now, he may have become regular driver of the ST Corporation. Therefore, in view of the passage of time also, now, it is not just and proper to interfere with the award of the labour court. Hence this petition is dismissed. Rule is discharged with no order as to costs.

24.9.1999. (H.K. Rathod,J.)

